IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 61 of 1993
with
INCOME TAX REFERENCE NO.61A of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRMA SPECIFIC FAMILY TRUST

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 61 of 1993
MR SN SOPARKAR, SR. ADVOCATE FOR MRS SWATI SOPARKAR for Petitioner
MR MANISH R BHATT for Respondent

1. INCOME TAX REFERENCE No. 61A of 1993
MR SN SOPARKAR, SR. ADVOCATE FOR MRS SWATI SOPARKAR for Assessee
MR MANISH R BHATT for Revenue

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 01/03/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. As can be seen from the Statement of Case, a consolidated reference is made incorporating reference at the instance of the assessee as well as reference at the instance of the revenue. In the circumstances, the Registry is directed to register the reference at the instance of revenue as Income Tax Reference No.61-A of 1993.

Income Tax Reference No.61 of 1993 :

2. The following five questions have been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench "A" at the instance of the assessee :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that interest including bank interest earned by the assessee was not liable to be included in the computation of deduction u/s 80I of the Act?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal while deciding the assessee's appeals against the order passed by the learned C.I.T. u/s 263 of the I.T.Act, 1961, had jurisdiction to direct the Assessing Officer to make proper investigation and then decide the question of allowability of additional commission in accordance with law?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal should have cancelled the order of the C.I.T. directing the Assessing Officer to disallow the additional commission?

(4) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal while deciding the assessee's appeals against the order passed by the C.I.T. u/s 263 of the I.T.Act, 1961, had jurisdiction to direct the Assessing Officer to make proper investigation and then decide the

question whether there was any excess consumption of soda ash and whether addition was required to be made on that score?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal should have cancelled the order of the C.I.T. by which he had directed the Assessing Officer to make additions regarding excess consumption of soda ash?"

3. Mr.S.N.Soparkar, the learned Senior Advocate appearing on behalf of the applicant assessee states that he does not press the reference at the instance of the assessee, under instructions. The reference is returned unanswered.

Income Tax Reference No.61-A of 1993 :

4. At the instance of revenue, the following questions of law have been referred by the Income Tax Appellate Tribunal :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Assessing Officer was justified in including the amount relating to excess of recovery on account of advertisement over expenditure in computation for deduction u/s 80I of the Act?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the interest payable to discretionary trusts who were beneficiaries of assessee trust on the amount belonging to the discretionary trusts and lying in deposit with the assessee trust, was allowable as deduction in computation of profits and gains of business of assessee trust?"

5. In so far as the first question at the instance of revenue is concerned, it pertains to Assessment Years 1984-85 and 1985-86. It is common ground between the parties that the said question arises from a common order of the Tribunal and the facts and contentions stated in Income Tax Reference NO.59-A of 1993 would govern the present issue, and hence, the same are not repeated here.

6. Hence, for the reasons stated in judgement rendered today in Income Tax Reference No.59-A of 1993, the question referred at the instance of revenue is

answered in the affirmative i.e. in favour of the assessee and against the revenue.

7. In relation to the second question at the instance of revenue, which is relatable only to Assessment Year 1984-85, it is an accepted position between the parties that the said question stands covered by the decision of this Court in the case of Commissioner of Income Tax v. Tanvi Sajni Family Trust, 209 ITR 497. In the result, the said question is answered in the affirmative i.e. in favour of the assessee and against the revenue, following ratio of the aforesaid reported decision of this Court.

8. In the result, both the references stand disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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